

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-12306-FDS

KENNETH AND PAMELA PRICE JEAN,)
Plaintiffs)
)
vs.)
)
CITY OF ASHBURNHAM POLICE)
DEPARTMENT, CITY OF WINCHESTER)
POLICE DEPARTMENT,)
ROB HARRINGTON, in his capacity as)
CHIEF OF THE WINCHESTER POLICE)
DEPARTMENT, JACK MURRY, in his capacity)
as CHIEF OF THE ASHBURNHAM POLICE)
DEPARTMENT, TODD C. PARSONS,)
RAYMOND M. ANAIR, ROBERT BRENNON,)
WILLIAM P. GEOFFROY, BRIAN HART,)
KEVIN AHEARN, KEVIN E. WOLSKI)
OFFICER JOHN DOE, OFFICER JOHN DOE,)
Defendants)

DEFENDANTS, CITY OF WINCHESTER POLICE DEPARTMENT,
ROB HARRINGTON, RAYMOND M. ANAIR, WILLIAM P. GEOFFROY,
AND KEVIN E. WOLSKI'S, ANSWER TO SECOND AMENDED COMPLAINT
AND DEMAND FOR TRIAL BY JURY

AS TO INTRODUCTION

As to the unnumbered paragraph contained on the first page of the complaint, the defendants say that they need not respond to the first sentence. To the extent that the unnumbered paragraph is deemed to allege any wrongdoing on the part of any of said defendants, they deny the same and further deny the remaining allegations as contained in unnumbered paragraph to the extent that they are deemed to relate to them.

As to the unnumbered paragraph on p. 2, the defendants deny the allegations as contained therein to the extent that they relate to them.

AS TO PARTIES

1. The defendants neither admit nor deny the allegations contained in paragraph 1 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.
2. The defendants neither admit nor deny the allegations contained in paragraph 2 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.
3. The defendants neither admit nor deny the allegations contained in paragraph 3 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.
4. The defendants neither admit nor deny the allegations contained in paragraph 4 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.
5. The defendants neither admit nor deny the allegations contained in paragraph 5 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.
6. The defendants neither admit nor deny the allegations contained in paragraph 6 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.
7. The defendants neither admit nor deny the allegations contained in paragraph 7 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

8. The defendants neither admit nor deny the allegations contained in paragraph 8 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

9. The defendants neither admit nor deny the allegations contained in paragraph 9 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

10. The defendants neither admit nor deny the allegations contained in paragraph 10 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

11. The defendants neither admit nor deny the allegations contained in paragraph 11 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

12. The defendants neither admit nor deny the allegations contained in paragraph 12 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

AS TO STATEMENTS OF FACTS

13. The defendants deny the allegations contained in paragraph 13 of the plaintiffs' complaint.

14. The defendants say that they need not respond to the allegations contained in paragraph 14 as they do not relate to them. To the extent they are deemed to relate to said defendants, they deny the same.

15. The defendants neither admit nor deny the allegations contained in paragraph 15 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

16. The defendants neither admit nor deny the allegations contained in paragraph 16 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

17. The defendants neither admit nor deny the allegations contained in the first clause of paragraph 17 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof and deny the remaining allegations contained in said paragraph.

18. The defendants neither admit nor deny the allegations contained in paragraph 18 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

19. The defendants say that they need not respond to the allegations contained in paragraph 19 as they do not relate to them. To the extent they are deemed to relate to said defendants, they deny the same.

20. The defendants neither admit nor deny the allegations contained in the first sentence of paragraph 20 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof. The defendants say that they need not respond to the allegations contained in the second sentence of paragraph 20 as they do not relate to them. To the extent they are deemed to relate to said defendants, they deny the same.

21. The defendants say that they need not respond to the allegations contained in the second sentence of paragraph 21 as they do not relate to them. To the extent they are deemed to relate to said defendants, they deny the same.

22. The defendants say that they need not respond to the allegations contained in the second sentence of paragraph 22 as they do not relate to them. To the extent they are deemed to relate to said defendants, they deny the same.

23. The defendants say that they need not respond to the allegations contained in the second sentence of paragraph 23 as they do not relate to them. To the extent they are deemed to relate to said defendants, they deny the same.

24. The defendants deny the allegations contained in paragraph 24 of the plaintiffs' complaint.

25. The defendants deny the allegations contained in paragraph 25 of the plaintiffs' complaint.

26. The defendants deny the allegations contained in paragraph 26 of the plaintiffs' complaint.

AS TO COUNT I

27. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 26 of the plaintiffs' complaint and incorporate them herein by reference.

28. The defendants deny the allegations contained in paragraph 28 of the plaintiffs' complaint.

29. The defendants deny the allegations contained in paragraph 29 of the plaintiffs' complaint.

AS TO COUNT II

30. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 29 of the plaintiffs' complaint and incorporate them herein by reference.

31. The defendants deny the allegations contained in paragraph 30 of the plaintiffs' complaint.

32. The defendants deny the allegations contained in paragraph 32 of the plaintiffs' complaint.

AS TO COUNT III

33. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 32 of the plaintiffs' complaint and incorporate them herein by reference.

34. The defendants say that they need not respond to the allegations contained in the second sentence of paragraph 34 as they do not relate to them. To the extent they are deemed to relate to said defendants, they deny the same.

35. The defendants say that they need not respond to the allegations contained in the second sentence of paragraph 35 as they do not relate to them. To the extent they are deemed to relate to said defendants, they deny the same.

AS TO COUNT IV

36. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 35 of the plaintiffs' complaint and incorporate them herein by reference.

36. The defendants deny the allegations contained in paragraph 36 of the plaintiffs' complaint.

37. The defendants deny the allegations contained in paragraph 37 of the plaintiffs' complaint.

38. The defendants deny the allegations contained in paragraph 38 of the plaintiffs' complaint.

39. The defendants deny the allegations contained in paragraph 39 of the plaintiffs' complaint.

AS TO COUNT V

40. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 39 of the plaintiffs' complaint and incorporate them herein by reference.

41. The defendants deny the allegations contained in paragraph 41 of the plaintiffs' complaint.

42. The defendants deny the allegations contained in paragraph 42 of the plaintiffs' complaint.

43. The defendants deny the allegations contained in paragraph 43 of the plaintiffs' complaint.

AS TO COUNT VI

44. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 43 of the plaintiffs' complaint and incorporate them herein by reference.

45. The defendants deny the allegations contained in paragraph 45 of the plaintiffs' complaint.

46. The defendants deny the allegations contained in paragraph 46 of the plaintiffs' complaint.

47. The defendants deny the allegations contained in paragraph 47 of the plaintiffs' complaint.

AS TO COUNT VII

48. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 47 of the plaintiffs' complaint and incorporate them herein by reference.

49. The defendants deny the allegations contained in paragraph 49 of the plaintiffs' complaint.

50. The defendants deny the allegations contained in paragraph 50 of the plaintiffs' complaint.

AS TO COUNT VIII

51. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 50 of the plaintiffs' complaint and incorporate them herein by reference.

52. The defendants deny the allegations contained in paragraph 52 of the plaintiffs' complaint.

53. The defendants deny the allegations contained in paragraph 53 of the plaintiffs' complaint.

54. The defendants deny the allegations contained in paragraph 54 of the plaintiffs' complaint.

55. The defendants deny the allegations contained in paragraph 55 of the plaintiffs' complaint.

AS TO COUNT IX

56. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 55 of the plaintiffs' complaint and incorporate them herein by reference.

57. The defendants deny the allegations contained in paragraph 57 of the plaintiffs' complaint.

58. The defendants deny the allegations contained in paragraph 58 of the plaintiffs' complaint.

59. The defendants deny the allegations contained in paragraph 59 of the plaintiffs' complaint.

AS TO COUNT X

60. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 59 of the plaintiffs' complaint and incorporate them herein by reference.

61. The defendants deny the allegations contained in paragraph 61 of the plaintiffs' complaint.

62. The defendants neither admit nor deny the allegations contained in paragraph 62 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

63. The defendants neither admit nor deny the allegations contained in paragraph 63 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

64. The defendants say that they need not respond to the allegations contained in paragraph 64 as the document referred to therein speaks for itself. To the extent that paragraph 64 is deemed to allege compliance with c. 258, the defendants deny the same.

65. The defendants neither admit nor deny the allegations contained in paragraph 65 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

66. The defendants deny the allegations contained in paragraph 66 of the plaintiffs' complaint.

AS TO COUNT XI

67. The defendants repeat and reallege their answers to the allegations contained in paragraphs 1 through 66 of the plaintiffs' complaint and incorporate them herein by reference.

68. The defendants deny the allegations contained in paragraph 68 of the plaintiffs' complaint.

69. The defendants deny the allegations contained in paragraph 69 of the plaintiffs' complaint.

70. The defendants deny the allegations contained in paragraph 70 of the plaintiffs' complaint.

71. The defendants say that they need not respond to the allegations contained in paragraph 71 as the document referred to therein speaks for itself. To the extent that paragraph 71 is deemed to allege compliance with c. 258, the defendants deny the same.

72. The defendants neither admit nor deny the allegations contained in paragraph 72 of the plaintiffs' complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leave the plaintiffs to their burden of proof.

73. The defendants deny the allegations contained in paragraph 73 of the plaintiffs' complaint.

SECOND DEFENSE

The defendants say that if they were negligent as alleged which they specifically deny, the negligence of the plaintiffs was greater than the alleged negligence of the defendants and, therefore, the plaintiffs cannot recover.

THIRD DEFENSE

The defendants say that the plaintiffs' own negligence contributed to the cause of the accident and, therefore, the recovery of damages, if any, must be reduced in accordance with the law.

FOURTH DEFENSE

The defendants say that the incidents as alleged in the plaintiffs' complaint were not caused by any person for whose conduct the defendants are legally responsible.

FIFTH DEFENSE

The defendants say that at the time of the alleged incidents the plaintiffs were guilty of a violation of the law which contributed to the alleged incidents.

SIXTH DEFENSE

The defendants say that this action was not commenced within the time required by the laws made and provided therefor.

SEVENTH DEFENSE

The defendants say that due written notice of the time, place, and cause of the plaintiffs' injuries was not given by the plaintiffs to the said defendants, and as a result the defendants have been prejudiced.

EIGHTH DEFENSE

The plaintiffs are not entitled to recover as the complaint does not set forth a claim upon which relief can be granted.

NINTH DEFENSE

In further answering, the defendants say that the plaintiffs' claims are frivolous and not made in good faith, and the defendants, therefore, demand their costs and attorneys' fees pursuant to G.L. c. 231, § 6F.

TENTH DEFENSE

The defendants say that if plaintiffs were injured as alleged, such was due to the acts or negligence of another, which constitute an intervening, superseding cause and, therefore, defendants are not liable.

ELEVENTH DEFENSE

Any statements made by the defendants, their agents, servants or employees that the plaintiffs allege were defamatory, were true, and thereby bar the plaintiffs' recovery for defamation.

TWELFTH DEFENSE

Plaintiffs have waived or should be estopped from asserting some or all of the claims set forth in the complaint.

THIRTEENTH DEFENSE

Some or all of the claims set forth in the complaint are barred by virtue of the plaintiffs' failure to mitigate their damages.

FOURTEENTH DEFENSE

The defendants say that the plaintiffs have failed to comply with the requirements of M.G.L. c. 258, §§ 2 and 4 and, as such, the complaint must be dismissed.

FIFTEENTH DEFENSE

The defendants say that they are immune from liability in this case.

SIXTEENTH DEFENSE

The defendants say that the discretionary function exemption applies so as to preclude the imposition of liability in this case.

SEVENTEENTH DEFENSE

The defendants say that M.G.L. c. 258, § 10 precludes the imposition of liability in this case.

EIGHTEENTH DEFENSE

The defendants state that any actions taken by the defendants in connection with the allegations in this complaint were justified and required by considerations of public policy, safety and law enforcement.

NINETEENTH DEFENSE

The defendants say that they are immune from liability for damages for any violation of the plaintiffs' civil rights under federal or state law since their conduct at all relevant times was in good faith, without malice and not in disregard of settled principles of constitutional law.

TWENTIETH DEFENSE

The defendants state that at all times they acted reasonably, within the scope of their official discretion and with a good faith belief that their actions were lawful and not in violation of any clear established statutory or constitutional right of which a reasonable person would have known with regard to all matters in the complaint which bear on a state or federal question.

TWENTY-FIRST DEFENSE

The defendants state that they are immune from suit because of the doctrine of qualified immunity.

TWENTY-SECOND DEFENSE

The defendants state that the plaintiffs have failed to allege any acts of material nature which rise to the level of constitutional deprivations.

TWENTY-THIRD DEFENSE

The defendants state that a civil rights action against the defendants must fail since they cannot be held liable under the *respondeat superior* doctrine and the plaintiffs have failed to show that the defendants caused the alleged constitutional violation.

TWENTY-FOURTH DEFENSE

The defendants' actions and conduct were reasonable under the circumstances.

TWENTY-FIFTH DEFENSE

The defendants state that plaintiffs have failed to set forth an actionable claim, pursuant to 42 USC § 1983 since the plaintiffs are unable to establish that there was a deliberate indifference to the rights of its inhabitants or that the alleged deficiency is related to plaintiffs' alleged injuries.

TWENTY-SIXTH DEFENSE

The defendants state that there is no evidence that defendants' conduct was extreme or outrageous.

TWENTY-SEVENTH DEFENSE

The defendants state that the plaintiffs' claim must fail since the defendants were, at all relevant times, discharging discretionary functions and, thus, are entitled to immunity.

TWENTY-EIGHTH DEFENSE

The defendants say that their acts and conduct were performed according to and protected by law and/or legal process and, therefore, the plaintiffs cannot recover.

TWENTY-NINTH DEFENSE

The defendants state that the plaintiffs' claims, pursuant to 42 USC § 1983, must fail since they have an adequate post deprivation remedy.

THE DEFENDANTS, CITY OF WINCHENDON POLICE DEPARTMENT, ROB HARRINGTON, RAYMOND M. ANAIR, WILLIAM P. GEOFFROY, KEVIN AHEARN AND KEVIN E. WOLSKI, HEREBY DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

THE DEFENDANTS
CITY OF WINCHENDON POLICE
DEPARTMENT, ROB HARRINGTON,
RAYMOND M. ANAIR, WILLIAM P.
GEOFFROY AND KEVIN E. WOLSKI

By /s/ Nancy Frankel Pelletier
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CERTIFICATE OF SERVICE

I, Nancy Frankel Pelletier, Esq., hereby certify that on this 30th day December, 2004, I served a copy of the above upon the parties in the action by mailing, postage prepaid, to counsel:

Andrew M. Fischer, Esq. Jason & Fischer 47 Winter Street Boston, MA 02108	Mark D. Stern, Esq. 34 Liberty Avenue Somerville, MA 02144
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Subscribed under the penalties of perjury.

/s/ Nancy Frankel Pelletier
Nancy Frankel Pelletier, Esq.